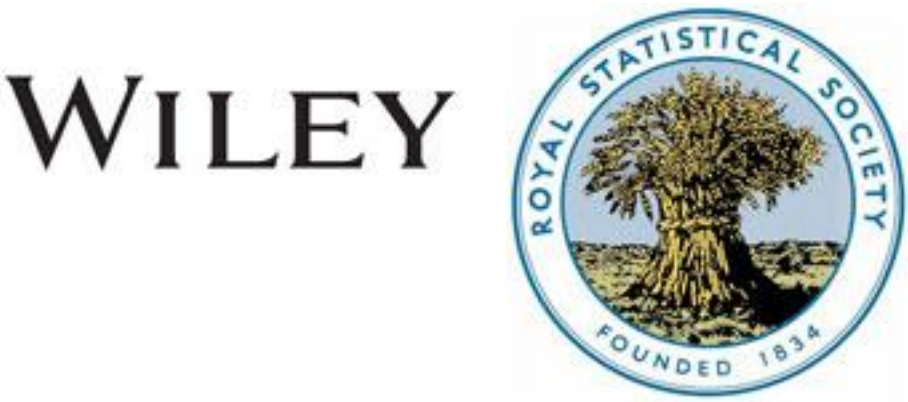

The History *and* Statistics *of the* Irish Incumbered Estates Court, *with* Suggestions *for a* Tribunal *with* Similar Jurisdiction *in* England.

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I.—*The State of Ireland in* 1849.

The attention of thoughtful persons has for twelve months past been fixed on Ireland to a degree which is without example in our history, and which promises well for the future of that anxious and unsettled country. At no former time has the condition of her rural population been so carefully investigated by inquirers, official and private. In addition to the reports conveniently known by the names of the Chairmen of the Commissions, the Duke of Richmond, and Lord Bessborough, there are many other new and valuable sources of information. Of the volumes which have lately appeared, it will suffice to refer to the sketches of the Land System, by Professor A. Richey, Q.C., and Mr. C. Russell, M.P., Q.C.; to the graphic "Pictures from Ireland," by an able writer who shrouds his identity under the name of "Terence Magrath;" and lastly to the valuable letters of the special correspondent of the "Daily "News." It follows from these and other publications, that it is no longer necessary to preface an essay like the present with any description of the laws and usages which affect estates in Ireland, or with any inquiry into the causes which have led, at intervals, to a state of agricultural depression, involving political and social disturbance, and demanding as a sharp necessity parliamentary interference.

The condition of Ireland last year must have brought back vividly to the minds of Mr Forster, Mr. Tuke, and a very few others, their philanthropic labours of more than thirty years ago. But the consequences of the famine of 1846-47 were far more

alarming than those of any recent failures of harvest. Ireland has during the long interval made rapid strides in material prosperity, and it is hard to realise the state of things existing after the great potato famine. It was not a question then of how to deal with tenants who refused to pay rents, which (in most cases) they were able to pay: it was a case of absolute inability; and the general non-payment of rents affected the landlord class to an extent of which more recent occurrences can give not so much as a slight idea. Of the genuine character of the distress there was not the least doubt, and it was useless for landowners to threaten with legal process tenants of whose utter destitution they were convinced. There was no more conclusive fact than the tremendous and unexampled strain placed upon the poor law system. It was no unusual thing for the poor rates in 1847-50, to amount to 8*s.*, 10*s.*, or even 12*s.* in the pound; while in a few of the most distressed districts they rose as high as 20*s.* in the pound.

The landlords were ill prepared for the disaster, being burdened with debt to an unprecedented extent. How far as a class they were blamable for this it is needless to inquire, and a variety of causes had long been operating to involve and incumber them. For the first fifteen years of this century, Irish agriculture had been in a flourishing state. Prices were inflated during the long period of European wars. Rents had risen, and expenditure had increased in proportion. Shortly after the peace of 1815 prices diminished, and the rents reserved by leases which had been made in prosperous years could no longer be paid in full. There could be no better proofs of the changed condition of things than those handsome castles and mansions, which were found to be disproportioned to the diminished incomes of their owners. Many of these stately edifices were left unfinished, and some of them have so remained to a recent, if not to the present, day. Their erection helped to aggravate the burden of debt on many a well known family.

It would be interesting to know what proportion of the surface of Ireland was prior to 1849 in settlement, but no statistics on this point are forthcoming. My experience, gained in the investigation of the titles in Ireland, leads me to the conclusion that five-sixths of the land was strictly settled. At the present time, the proportion would certainly be smaller, as many of the new purchasers were far less likely to "tie up" their lands, than were their predecessors.

The tendency of a strict settlement, it must be remembered, is to reduce the available income of each successive holder. On entering into possession of the family property he probably finds a certain amount of incumbrance existing. He has a jointure to pay, and perhaps also the sums charged for the benefit of the

younger children of one or more of the former owners. On the coming of age of each tenant-in-tail of a considerable estate, it was usual in Ireland to make new legal arrangements; and the price paid by him for an income, during his father's life, was usually his own formal consent to the charging of some, or all, of his father's debts on the inheritance. When a generation passed away, there were, of course, fresh jointures and younger children's portions added to the old burdens; so that three or four times in a century there would be, in the natural course of events, definite and heavy additions to the burden of indebtedness. Jointures, no doubt, ceased to be payable in time, but as a rule the other family obligations were never wiped off. If a younger child required to realise, no longer contented to receive the interest on his charge, the usual course was to assign to a stranger; and so each item of debt was liable to be assigned, and subdivided also, until the "schedule of incum-" brances," which the court in the end drew up, was frequently a long and complicated document.

Year by year, therefore, the ordinary holder of a family estate found himself with an augmenting list of creditors, and a diminishing margin of income for his own use. It is no exaggeration to say that with the great famine this margin of income disappeared altogether, leaving very many of the landlords of Ireland with terribly diminished means. There were doubtless many who had been provident, and others who had renewed their fortunes in one way or another; but making all deductions, there remained nothing but a state of virtual bankruptcy for a number of landowners, large and small, hardly to be estimated under 3,000.

There were two tribunals which had jurisdiction. The Court of Exchequer in those days had the powers of a court of equity, and heard applications by creditors having claims on landed property; and a few suits had long been pending in the office of the Remembrancer, an officer (now extinct) analogous to a master, and whose powers of completing the business referred to him seem to have been of limited kind. By far the greater number of suits by creditors were however pending before the Court of Chancery, the inefficiency of whose process had even then become a bye-word. The excuse may be made that the rush of suitors immediately after the famine, and the resulting insolvency of so many landlords, caused a block, and that the machinery was inadequate. Yet in earlier years, when there was no extraordinary pressure, it had proved all but impossible to clear estates of incumbrances by means of the Court of Chancery. The procedure was so slow, and so costly, that the famous picture drawn by the hand of a novelist cannot be said to be overdrawn, and the suit of *Jarndyce v.*

Jarndyce had hundreds of exemplars in the annals of the Irish Chancery. These details came fully to light on the examination of the abstracts of title which were laid before the new Commission, and these documents contained narratives equal to anything in fiction.

As concrete examples are better than mere general description, I add some genuine cases, illustrative of the incumbered state of property, and the difficulty of gaining relief through the old tribunals. They are fair examples, taken from my notes of these titles :—

Illustrations of Incumbered Estates. From Notes taken in 1850 *and following Years.*

Re Cleary.—This estate was purchased in Chancery in 1817 by a person who used trust money for the purpose. In 1822 a bill filed against him. In 1841 a report finding all the facts. In 1842 final decree directing sale; the interest due at that date far exceeding the principal demand. The owner then settled his equity of redemption, this rendering supplementary bills and other proceedings necessary, and another final decree in 1850.

Re Rose.—Bill filed in 1801 by a mortgagee, who obtained a decree in 1805. Not being fully paid off, a receiver appointed in 1815. In 1834 a report finding what charges then existed, but they remained unpaid.

Re Raymond.—The earliest charges created by a deed of 1731.

Re Macartney.—In 1817 bill filed by a judgment creditor, and receiver appointed, who has since continued.

Re Fair.—Bill filed in 1834—suit proceeding since.

Re Head.—The incumbrances were annuities charged in 1761 and 1780.

Re Browne.—In 1813 former owner sold part of his property, indemnifying against charges by the rest. A judgment of 1809 being revived and process issued against the sold lands, the purchaser filed a bill to enforce his indemnity, and obtained a decree in 1834: in spite of which the estate put into strict settlement in 1839, occasioning bills of supplement and revivor; in 1850 final decree.

Re Hynes.—There were twelve suits pending by creditors to sell this property, when in 1839 order made staying all but Tilly's suit, and enabling the other plaintiffs to go in under that. 1841, report finding 31*l.* due to Tilly. Suit still proceeding.

Re Chichester.—A large annuity charged in 1817, which was never paid regularly, but was itself mortgaged by the annuitants several times over. 1836 suit commenced, "no one living can quite understand the complications of this "suit and of the incumbrances."

Re Hoare.—Bill filed in 1819, and sale under decree in 1827; but purchaser discharged because the representatives of a mortgagee of 1768 had not been made parties. This mortgage now the foundation of the petitioner's case.

Re Becher —Several incumbrances dating from last century, the oldest being a mortgage of 1737.

Re Currie.—In 1802 Scott took a transfer of on old mortgage, and filed a bill in Exchequer (Equity), and this suit went on at intervals for forty-eight years, the latest decree being 2nd July, 1850.

Re Mason.—This property mortgaged in 1832 to Wright, who became bankrupt in 1840. Litigation going on ever since.

Re Shanahan.—A creditor obtained a decree for sale in 1796, and a receiver was appointed; receiver has continued ever since.

Illustrations of Incumbered Estates—Contd.

Re Mulloy.—Purchased in 1806 with money borrowed for the purpose, and which has never been repaid.

Re Beytagh and Concannon.—This was an exceptionally bad case. The estate was devised in 1806 to several persons, but it was already incumbered. 1810, bill filed by one of the owners against another; 1811, bill of revivor, also cross bill. 1812, answers filed to both bills; 1813, decree to account, and the case remained before the master until 1821, when he reported; 1832, death of plaintiff and bill of revivor. Death of master in the midst of his work, and new report necessary, to which the original plaintiff's son filed exceptions. 1833, court sent the report back to master for amendment; after which process defendant filed exceptions to it; but in 1836 the report was confirmed. 1838, bill of revivor and supplement filed, to which, in 1839 and 1840 twenty-one separate answers were filed by various parties interested. 1843, further report; 1844, order giving liberty to amend bill by adding fresh defendants; 1845, allocation report finding charges, and final decree for sale. In 1852 sale under Incumbered Estates Act after forty-two years of active (but abortive) inquiry in Chancery.

II.—*The Incumbered Estates Commission.*

In 1848, so many complaints were made of the difficulty, it might rather be said the impossibility, of prosecuting in the ordinary equity tribunals any suit for the sale and administration of real estate, and the payment of mortgagees and other incumbrancers, that the Government took the matter up. An Act was passed, 11 and 12 Vict., cap. 48, enabling persons to petition the Court of Chancery summarily, and enabling that court to give relief without some of the former incidents of procedure. This Act was inoperative, as very few petitions were presented, and in no case was further progress found to be within the reach of the suitor. The Government then came to the conclusion that there was an inherent want of power in the Court of Chancery to untie the tangled knots, and it was suggested that a new and exceptional tribunal, with very wide powers, should be created for this purpose. Whether the proposal originated with Lord Russell (then a leading member of the Government) or with his friend Sir R. Peel (hardly less influential though not in office) it matters little, for it was one which probably occurred to many minds, and one which was quickly accepted by all statesmen. The legal member of the Government who was responsible for the preparation of the scheme, was Sir J. (afterwards lord) Romilly, and the draftsman of a singularly well drawn Bill, for which "amendment Acts" were not required, was Mr. Coulson.

After slight opposition, and with the assent of all the more important members of the legislature, the Incumbered Estates Act, 12 and 13 Vict., cap. 77, became law on the 28th July, 1849. There was at once thrown on Lord Russell the important duty of selecting three Commissioners, a duty which he well performed,

after consultation with Sir J. Romilly, and with Mr. J. H. Christie, a conveyancer of the highest eminence in Lincoln's Inn.

It was essential that the new court (endowed, said its critics, with most arbitrary and unheard of powers) should command the respect of all the other tribunals, and of the legal profession. On the other hand, it was not likely that leading advocates at the bar would accept appointments which were for a short term of years only, and carried with them very moderate salaries. The mode in which this difficulty was solved reflected credit on the Government of that day. The headship of the new court was offered to and accepted by the late Baron Richards, one of the judges of the Court of Exchequer, who had long experience in the administration both of law and equity, and who combined intimate knowledge of the old system, with much aptitude for the creation of a better system. He retained his seat in his old court (which was not overburdened with business) and by giving up circuit, was enabled to give a fair portion of his time, about three days in each week, to the work of the new tribunal. Without such aid as he afforded, whatever its merits, the new system might not have been able to hold its own against professional prejudice, and the unconcealed dislike of many landowners in and out of parliament. For although parliament had spoken clearly in passing the measure, there were difficulties to be encountered in the outset of the career of the new tribunal. The land owning class in Ireland, although reduced in wealth, had much influence left in other ways, and they rather resented the introduction of a machinery which was less a relief to them, than an assistance to their hungry creditors. A stringent bankruptcy Act is less welcome to those on whom it is to act, than to those who are eager on the realisation of their demands. Some leading lawyers looked askance. This feeling wore off in time, but it is certain that at the very outset the court was not popular, and Mr. Whiteside, the spokesman of the territorial class, rarely lost an opportunity of using his power of sarcastic criticism at the expense of the Incumbered Estates Commission. Although a few leading members of the bar disapproved of the court, the solicitors soon found that it was for their own purposes a satisfactory tribunal. Not only were their costs and charges rapidly paid, but they obtained with equal rapidity the settlement of outstanding, and sometimes very old accounts; ancient bills of costs against the heads of noble and gentle families; chancery items "long drawn " out," and representing the litigation of years, sometimes of generations. These varied demands, hopeless as many of them had once appeared, were now capable of realisation. In short, the process of the new court soon became popular with the solicitors.

Some words must be added as to the two judicial colleagues of

Baron Richards. One of them was Dr. (now the Right Hon.) M. Longfield, who possessed a minute knowledge of the laws of real property, and was Regius Professor of English and feudal law in the University of Dublin, a post which he holds to this day. The third commissioner was the late C. J. Hargreave, F.R.S., Q.C., and a bencher of the Inner Temple. He was appointed at a very early age, solely by reason of his singular merit, and the high opinion of him entertained by all the eminent lawyers with whom he had come in contact. The fact of his being sent over from England at first aroused some slight feeling amongst those with whom "Ireland for "the Irish" was the leading maxim; but his never-failing courtesy, and his rare genius for all legal problems, however difficult, soon caused a revulsion of feeling, and before no long time had elapsed he had attained both fame and popularity in the land of his adoption.*

The three commissioners of the new tribunal met in the autumn of 1849, and spent some time in drawing up their rules of procedure. Evidently this was a work of high importance; it was also one of difficulty, for little help was to be gained from any procedure then existing. The practice in chancery was unreformed, and in truth was to be deviated from as far as possible, being essentially tortuous and technical, costly and ineffective. Perhaps it is not too much to say that these commissioners were the first in modern times to strike out a simple and rational mode of procedure, at a date when all courts were overborne by the weight of cumbrous usages and rules of practice. Shortly afterwards common sense was allowed some entry into the superior courts, but at the period indicated the procedure (in equity especially) was of the most cumbrous and perplexing kind.

A large old-fashioned mansion in Henrietta Street, Dublin, was taken for the commissioners, the stable at its rear being enlarged into a court house, where the commissioners sat together two days weekly, and where the public sales of estates took place. On other days the commissioners sat apart, each having his own list of cases; and the appeal was to the three sitting together in full court. Many forms of appeal have since been tried, but I have never met with one so satisfactory as this, for the judge who heard the case in the first instance was always present, and there was no loss of time

* This eminent man, a tribute to whose memory ought to find a place in any sketch of the modern legal history of Ireland, was not to enjoy a long career. He became one of the judges of the reconstructed court in 1858, and died in 1866, a victim to intense study of mathematical problems. In his last illness he was attended by the late Dr. Stokes—leader of the medical profession in Ireland—who said of him, in my hearing, "He *was* the Incumbered Estates Court." Hargreave was a graduate and honour man of the University of London, and received the honorary degree of LL.D. from the University of Dublin.

and temper, as often now at Westminster, through the absence of the very judge who alone knows all about the case. This court of appeal was in short so satisfactory that not frequently did any question go further, although the Act provided an appeal to the Judicial Committee of the Privy Council.

When the court had got into working order the petitions came in rapidly. Each went before a single commissioner for a fiat, after which the administrative work arising out of it went on in his chambers* under the care of his own examiner, a highly important share of the work devolving always on the single Master of the Court. Each of these officers to a great extent combined the functions of a chief clerk in chancery with those of a conveyancing counsel to the court. Notices were given, publicly and otherwise, to all persons who had or were supposed to have any interest. The title was carefully examined. Schedules of tenancies and of the incumbrances on the property were drawn up and settled, and all questions (and they were many) arising out of these documents were decided by the commissioner, whose ruling was liable to be reheard by the full court. Some estates were sold under private proposals, but the rule was to sell by judicial auction in lots to the highest bidders; and these sales were held in a crowded court house, often amidst some excitement. The process had even its romantic side, for something of regret was felt by all when a fine old ancestral mansion was knocked down to some newly-enriched butter merchant of Cork, distiller of Dublin, or ship owner of Belfast. The efforts made to save their heritage by some incumbered owners were painful to witness; but on the whole the change of ownership was beneficial; and in travelling through some parts of Ireland in after years it might be observed that the best managed estates were usually those which had changed owners by means of the incumbered estates machinery.

The sale of the estate was far from being the end of the process. Minute inquiries were made as to the proper destination of every portion of the fund; and in the course of these inquiries serious disputes on matters both of fact and of law often arose, requiring argument and adjudication. The conveyances to the purchasers also required most elaborate care in their preparation, and the more so from the character of absolute finality which these documents possessed.

The quantity of work which flowed in upon the court, especially in the years 1851-54 was far in excess of all anticipations. No arrangements had been made in any proportion to this result, and the smallness of the administrative staff, and the modest scale of their remuneration during those years, would surprise those who

* A very small share of the heavy work in chambers fell on the chief commissioner, five-sixths at least devolving on his two colleagues in equal shares.

have experience of the more magnanimous views entertained by the Treasury in regard to some departments of more modern growth.* One result of the temporary nature of the commission was noteworthy. Each one engaged, from the highest in rank to the lowest, worked with an amount of assiduity not commonly met with in the public service. Little account was made of the usual office hours, or even of customary periods of vacation. The only anxiety was to clear off the heavy work in the offices as rapidly and efficiently as possible. Can the explanation be that the employment being for a term of years only every person engaged (1) was in a highly efficient state, and (2) was "on his mettle," and anxious to show his fitness for further and perhaps higher employment in the service of the State? Such ideas are not ignored in military appointments, which are for a term of years only.

It may be convenient here to note some points in which the system of the Incumbered Estates Court was, or might have been, improved as time went on.

The location of the court at a distance from the other courts and from the headquarters of the legal professions was found very inconvenient. It led, as might have been expected, to the formation of a small and exclusive bar, and the general bar were naturally discontented. This was remedied soon after the establishment of the court on a permanent basis, new buildings being erected within the enclosure known as "The Four Courts."

In the early years of the court the printing, surveying, and mapping was done indifferently, and so much inconvenience arose from careless work, that the printing of the most important documents issued by the court, viz., the conveyances, was committed to the government printer, while the Ordnance Survey Department was entrusted with the work connected with surveys and maps. This was a practical improvement, yet it gave dissatisfaction to some. I well remember that the late Professor Cairnes spoke of it to me as an injustice, that a monopoly of the printing for the court should be created. After some years of experience, Judge Hargreave declared that if the machinery had to be reconstructed, the only satisfactory plan would be to set up a new and special office, in which all notices, schedules, and other documents should be printed under the immediate control of the court.

The conveyance granted by the court remains unchanged in form and in legal effect, and one of its incidents is a finality which excludes the idea of amendment, even by the authority which granted

* In later years, as the business of the court has decreased, the salaries of the judges and some of the officers have been raised, as though to illustrate the saying of Sydney Smith, that in the public service the payment or reward is in inverse ratio to the work done.

it. A "vesting order" is superior to a conveyance as a piece of legal machinery, because less costly, and at the same time capable of amendment if an error be discovered in it; but this had not been invented in 1849. In any perfect system of land transfer, it is now well understood that the power of judicial rectification must be an essential feature.

It fortunately happened that owing to the extreme care taken by the Commissioners and their subordinates, few errors were committed. There were, however, a few, arising chiefly from the misdescription of parcels, or of existing leases or tenancies. The error, however, which led to most discussion, and to a compensation by parliament, was an order made to pay a sum of money to "The "administrator of A. G." Unfortunately there had been another A. G., whose administrator hearing of the order, drew the money (whether by fraud or mistake never clearly appeared) and became insolvent. The owner of the estate being compelled to pay the amount over again to the right claimant, brought his grievance before parliament, and obtained a special enactment compensating him in full. There never was a compensation fund (as in the Australian Colonies), and Judge Hargreave held that a compensation fund in Ireland would prove an evil, by tending to encourage carelessness as well as exaggerated or fictitious claims. The special powers of the court were often so exercised as to keep the estate in the hands of its old owners. Part only was sold, or a new and comprehensive mortgage at 4 or $4\frac{1}{4}$ per cent. was negotiated; and thereby the court was enabled to clear off the multitude of old charges, which usually bore 5 per cent. interest, and judgments which bore 6 per cent., and re-grant the whole or the best part of the estate to the old owner (or his trustees)—if incumbered, then only with one charge at a low rate of interest. There were many instances of a transaction so advantageous to all persons interested.

Many complaints were made that in the early years of the court estates were sacrificed, by being sold at low prices. The answer was that most of them were in bad order, and over-tenanted; that the value of land, as of any other commodity, was what it would fetch at public competition after due publicity given to the sale; that the legislature had intended that the estates should be speedily sold, even in a depressed market. In some cases the owners were able to negotiate a postponement to better times, in others immediate sale was inevitable, even at from fifteen to eighteen years' purchase, not an unusual price realised under the judicial hammer in the period 1850-54. Some of the purchasers improved their new acquisitions, and then resold at a profit of from 10 to 40 per cent. in after years, and the knowledge of this fact was further bitterness to the sold-out owners. In course of time the value slowly rose to about

twenty-two years' purchase, which may be considered as the average normal value of eligible land in Ireland.

After the Land Act of 1870 the value again fell somewhat, and last year the depreciation had become marked and general. Yet the landlords have been found able to bear the recent strain, and very few, if any, estates have lately been submitted to a forced sale. This is a clear proof of general improvement in the resources of Ireland.

The Incumbered Estates Commission, 1849-58, more than fulfilled the expectations of those who designed it. It cleared a portion of the land of Ireland, estimated at one-tenth of the entire, from mortgages and other charges. It transferred so much of the island into the hands of new and solvent proprietors. The transfer from a needy to a solvent class has been followed by development and improvement of various kinds. Some of the new proprietors may have proved themselves grasping and rent-raising speculators, but this is not the character of the great majority of them: and only such as derive their opinions solely from newspapers will brand an entire class with the odium which has been earned by a small minority. So far from these changes of ownership having tended to bring about the present unsettled and discontented state of Ireland, I think that they have tended to defer, and to mitigate, that intermittent fever which now and again comes over Ireland, and from an attack of which she, I would fain hope, will soon recover. If the country had been in the hands of chancery receivers and of deeply mortgaged proprietors for the last few years, I doubt not that the condition of things would be more hopeless and helpless than it is at present.

The Incumbered Estates Commission sat for nine years, from October, 1849, to August, 1858, during which period 4,413 petitions were filed. The number includes supplemental petitions, and some for partition of lands. The number of absolute orders for sale of estates was 3,547. One-third of the estates had been for a longer or shorter period the subjects of suits in chancery before coming into the Incumbered Estates Court.

The estates were sold in 11,024 lots, and where a purchaser took several lots he often had them included in the same conveyance. The number of conveyances granted by the court of the purchased lands was 8,364.

From the addresses given by the purchasers, it appeared that only 324 were from England, Scotland, or the colonies. These purchasers paid in 3,160,224*l.* The others gave Irish addresses.

The gross proceeds of the sales stood at 23,161,093*l.*, including various sums of interest charged on purchase money paid in after the due period allowed for payment had been exceeded.

Of this amount 21,934,696*l.* was distributed by the Commissioners during the above mentioned period. The balance (partly invested in stock) being transferred to the credit of the new court.

Annual Account of Funds, Accountants' Department of the Incumbered Estates Commission.

Year ending 31st August.	Absolute Credits given to Creditors who became Purchasers.			Cash Receipts.		
	£	*s.*	*d.*	£	*s.*	*d.*
1850	—			483,791	4	3
'51	22,450	2	7	2,061,430	6	4
'52	163,314	14	9	2,631,147	13	2
'53	745,360	5	8	3,032,221	2	3
'54	549,698	2	8	2,454,840	14	2
'55	495,198	2	4	2,161,447	7	11
'56	675,696	16	7	1,995,105	5	6
'57	253,221	18	10	1,988,347	9	7
'58	562,114	3	–	2,393,228	11	5

For many years the expense of the court was defrayed by parliamentary votes. The public were however recouped to a great extent as follows:—For nine years the sales averaged 2 millions yearly, and the stamp duty paid by the purchasers on their deeds would therefore be 10,000*l.* per annum. It was in 1858 provided by statute that an *ad valorem* duty should be levied on all the property passing through the court. This is still levied, and it does not produce, one year with another, so much as one-fourth of the annual expense of the court, including judges' salaries, which are now charged on the consolidated fund. The diminished business is shown by the amount of this duty-fund:—

	£
Year ending March, 1864	6,446
„ '70	4,296
Treasury estimate for 1881-82	4,000

III.—*Developments of the Incumbered Estates Commission.*

After the commission had been hard at work for four years, an inquiry was made and an extension was resolved on; but at first this was only carried out by Acts continuing the court from year to year. A project then came forward in the shape of a Bill for improving the Irish Court of Chancery by adding a judge, and giving power of selling estates with that guaranteed or indefeasible title which has always been rightly regarded as the most valuable feature of the system. Much doubt was at once expressed as to the wisdom of getting rid of a thoroughly effective court, and striving to supply its place by means of reforms in chancery. The Bill went before a select committee of the House of Commons in 1856; and

although not condemned in terms by the report of that committee, it was virtually thrust on one side and forgotten. Baron Richards having resigned his chair, Mr. Martley, Q.C., succeeded him as chief of the court, this appointment convincing those who could discover its significance, that the court was to be made permanent. In short, in the year 1857 all who understood the question had come to the conclusion that the court must be made permanent, with enlarged powers. Even Mr. (afterwards lord chief justice) Whiteside, who had been the severest critic of the court, now acknowledged its utility; and in 1858 it became his duty as a law officer of the crown to take charge of the measure by which the court was perpetuated.

This became law on the 2nd August, 1858 [21 and 22 Vict., cap. 72], and it is enough to say that it turned the commission into a new equity court of three judges, with all the powers of the old commissioners, and some added powers. Estates of all kinds might now be sold, although unincumbered, and the court was empowered to grant "declarations of title" to owners who wished to have a perfect title, but did not wish to sell. Powers were also given to carry out contracts, and also to enforce specific performance of contracts, and subsequently power was given to sanction leases of settled estates.

Under the minor branches of jurisdiction, not much has been done, though it was most convenient that these powers should be conferred. I do not propose to enter minutely into the history of the court under its new designation. There have been changes in the *personnel*, and also in some details of procedure, which need not here be glanced at. So far as disincumbering Ireland was concerned, the heavy part of the work appears to have been got through before 1858, as fewer estates were after that date brought into the court, and those which came in were not on an average nearly so burdened with debt, as in the earlier period estates were found to be.

The following shows the state of the business coming before the court under its designation of Landed Estates Court, and more recently Court of the Land Judges:—

Petitions for Sale presented in the Year	For Sale of Incumbered Estates.	For Sale of Estates not Incumbered.
1864.....	429	43
'68.....	343	35
'72.....	291	33
'75.....	329	37
'79.....	312	27

On an average the applications for declarations of title are about 10 in each year, for partitions or exchanges about 4 in each year, for specific performance of contracts 4, for apportionment of rent 1. The appointment and oversight of receivers was added to the other duties of the land judges by the Act of 1877, and in 1879 481 receivers' accounts were passed, and 1,029 receiver summonses issued. The costs, taxed and certified, of proceedings before the land judges amounted in 1879 to 29,514*l.* which is about the average amount.

The value and net rental of the estates sold in some recent years appears as follows:—

	Amount of Purchase Money.	Net Rental, or Annual Value of the Estates.
	£	£
1872.....	1,451,688	76,289
'75.....	1,209,488	63,292
'79.....	799,008	45,015

In the year 1864 much interest was aroused by news of the success of the system of registering title in some of our colonies.* A measure partly founded on the Australian system, though with some important deviations and shortcomings, had been passed for England in 1862; and a very limited and tentative measure was all that could be gained (in the face of much opposition) for Ireland in 1865 [28 and 29 Vict., cap. 88]. When this was just beginning to work, Judge Hargreave, who was interested in the experiment, and had agreed to superintend it, died rather suddenly, and his premature death, more than any other single cause, contributed to the partial failure of a well intended, but incomplete scheme. Evidently such an Act ought to have applied to every new title granted by the court; but an option being allowed, the Act has, through professional prejudices, been excluded so largely that less than 700 titles are now on the new register, and the number is not likely to increase until there shall be a change in the law. Small as the amount of property is, there is quite enough to show that the system is safe, economical, and expeditious in working.

Up to the year 1880, only 679 properties passing by conveyance from the court have come upon this record, the estimated value

* In New Zealand alone 10,850 transfers and other dealings were registered in the year 1876, *vide Journal of the Statistical Society*, March, 1877, p. 107. These transactions are stated to have been carried out with a celerity, economy, and security which show "that the colonists are at all events, in this respect, "infinitely better off than their lawyer-ridden countrymen at home."

being 2,256,354*l.*, and the amount of charges created on such properties being 385,103*l.*

Taking the entire amount of property which has passed through the court from 1849 to this time at 52 millions, the title of only one twenty-fifth part therefore appears to have been registered, so as to preserve its guaranteed character. As to the remaining twenty-four twenty-fifths, the titles are year by year losing the quality they at the outset possessed, and relapsing into more or less of confusion. After an interval of (say) forty years, a parliamentary title is no better than any other, and all these titles in Ireland are gradually losing their value. A grand opportunity has thus been lost of preserving the once perfect and unimpeachable quality of an enormous mass of titles.

The cost to suitors in the early days of the Incumbered Estates Commission was very moderate indeed. Formal applications in court and formal orders on matters of detail were discouraged, administrative directions being given informally and inexpensively in chamber. A parliamentary return gave, many years since, the taxed costs in each case of the sale of a considerable number of estates. Were an accurate return of similar character obtained now, my impression is that the costs of proceedings would be found to have increased by nearly 50 per cent. The average costs are now stated at nearly 200*l.* for each case going through the court; but this is no clue to the cost of proceeding, seeing that many of the "estates" consist of a single leasehold house, or a little farm of two or three fields, while other estates are extensive and the necessary cost is considerable.

In 1849 it does not seem to have occurred to the legislature that the occupying tenants had any claim to pre-emption of their farms, nor was any such claim put forward even by the professed advocates of the farming class until many years later. By the light of recent events it is easy to criticise this omission, and to assert that if special facilities had been given for farm purchase many thousands of tenants in Ireland would now have become contented and thriving small proprietors. The usage of the court has been to prepare the estates for sale rather with a view to attract adjoining proprietors and capitalists; and the idea of tempting the farmer to buy the freehold of his own farm, whatever may be its merit, is altogether one of recent growth. I first heard the proposal made in Dublin in November, 1866, in the course of a long conversation, in which the Right Hon. J. Bright took a leading part. Three years later he procured the insertion of some clauses (now known by his name) in the Land Act of 1870, with this special object in view. Of the Bright clauses of that Act, as is well known, little use has been made. The reason of this failure has been carefully inquired

into by a parliamentary committee, of which Mr. G. Shaw Lefevre, M.P. (lately President of this Society) was the chairman; and his draft report (lately reprinted in a volume of essays) is a valuable contribution to the not abundant literature of this question.

The sales to tenants under the Bright clauses of the Land Act of 1870, in which charging orders to the Board of Works (for advances of public money in aid of those purchases) were made, have lately been as follows:—

	Purchases.	Amount.
		£
In 1876	71	60,919
„ '77	84	82,660
„ '78	129	117,421
„ '79	42	43,250

My own opinion is that the Bright clauses failed because of (1st) the apathy of the officials charged with the working out of the scheme, and (2nd) because of the want of a sufficiently simple and effective procedure. The average tenant farmer in Ireland is strongly attached to his holding, and if facilities are given him he will manage to purchase it at a fair price. He is however remarkably fond of his money, and unwilling to part with it; and if told that the cost of turning him into a peasant proprietor will amount to 60*l.* or 80*l.*—perhaps two or three times the rent of his holding—he will decline the scheme and abide his chances. Small transactions of this kind ought to be committed to the county court judge; and with regard to larger ones, the procedure of the court of the land judges might easily be simplified and cheapened.

I am however convinced that to turn the Irish farmer into a small proprietor, and then to leave his newly acquired title to drift into the ordinary kind of entanglement, is to confer on him a very doubtful benefit. If he is to be really placed in a better position, his title must be inscribed on a public register, and thereby kept from falling into doubt, complication, or obscurity. But so long as parliament recognises the vested right of any one class of men to keep the rest of the community in perpetual difficulty—in other words, so long as there is not a public and a compulsory register of titles for these kingdoms, it is a questionable boon to him and his successors to turn any small tenant into a freehold proprietor.

The Judicature Act for Ireland passed in 1877, part of its policy being to "level up," so that courts hitherto distinct might become branches of one high court. The judges of the Landed Estates Court were now raised to an equality with their judicial brethren,

and their court as a distinct tribunal ceased to exist. All its powers, as also its procedure, are preserved untouched.

It may fairly be questioned whether these recent changes were made in the interests of the public; and there is reason to fear that under other names some incidents and shortcomings of the old chancery system of Ireland may be revived. There are cycles in judicial history, and we have briefly followed out the narrative of a remarkable court from its rise in 1849, down to its practical absorption into chancery. Were it existing in all its old vigour and efficiency, can it be thought that Mr. Gladstone would now deem it necessary to invent a new land commission?

IV.—*Proposals for a Similar Tribunal in England.*

When we proceed to consider the expediency of founding here a tribunal after the model of the Incumbered Estates Commission, we are met with the difficulty that no means exist of discovering how many estates are incumbered, or what is the amount of indebtedness and the margin of solvency. Still the fact is well known that in every county there are many properties which are heavily charged, and which through the recent falling off of rents and giving up of farms are in a much embarrassed and precarious state. Take an incumbered landowner with four or five thousand a year of nominal rental. In good times he can pay interest and all other outgoings, and subsist on a margin of two or three thousand a year. In bad times his margin so necessary to him* has a tendency to disappear. What is wanted is a machinery by means of which he may without undue delay or expense sell his outlying farms, and pay off all the incumbrances—preserving for himself and his successors an estate smaller indeed but unincumbered. This can only be done now at very great cost. For example, if he puts up fifty lots of land at auction, there are fifty abstracts of title to be furnished to the purchasers. Fifty acute lawyers are immediately set to work to pick holes in his title, and to their fifty sets of requisitions, he is obliged to furnish fifty sets of replies, and so throughout.

If there were a land commission of the kind now proposed, the proprietor would furnish but one abstract; and the commissioners would, on examining it, raise no quibbles or difficulties of the merely formal kind. A title bad or defective in substance they of course would not accept, but such a title is the exception, not the rule. On being satisfied, they would sell in as many lots as might be desirable, and the only document supplied to each of the purchasers would be a certificate or order fully describing the lot, and by virtue of the statute vesting it indefeasibly in its new owner. This certificate (or a duplicate of it) should at once be entered in a new folio

* Voltaire said, "le superflu—chose très necessaire."

of a ledger kept in a public record office, and all subsequent dealings should be noted up on the same folio. Short forms of transfer and of charge should be provided, and the record itself should be under the control of the land commission.

So far is this from being a new project, that it accords almost exactly with the plan brought before the House of Commons in 1859 in a well known speech by Sir H. (now the Earl) Cairns, when he laid on the table two Bills—the best of their kind that have ever been prepared—one for establishing a land tribunal, and the second for establishing in connection with it a register of parliamentary or guaranteed titles.

From the remarkable success in working of the Irish court in its early stages, I should recommend it as the model to be followed in several particulars, advantage being taken of several points in which experience has been subsequently gained and extensions of power accorded. The head of the court should certainly be one of the superior judges, so that when the court sat for hearing arguments on disputed questions it should command the entire respect of the public. The chief commissioner need not however take any share in the administrative or conveyancing work done in chambers, all of which might devolve on his less dignified colleagues. And here it may be noted that the chief part of the work of such a court, whatever view the Treasury may have been induced to take on this point, is rather administrative than judicial. It is more administrative than the business of a county court judge, and not more judicial than that of an acting judge in bankruptcy—and here is the closest analogy.

In the working of a land tribunal in England, some difficulty would be caused by the absence of that perfect series of ordnance maps which in Ireland was of enormous use to the commission. The tithe maps are, however, fairly reliable, and they could be used until the ordnance survey is complete. The mapping and printing should, for reasons of economy, speed, and accuracy, be done, if not by a public department, yet under the immediate order of the court, and not by private and irresponsible hands. The proposed court might be established as an experiment for a term of five years, at the end of which period it would be much more easy than it is now to decide whether it should exist separately, or whether two other public departments—the tithe and copyhold commission and the land registry—should be merged into it. Nothing but experiment can safely determine how a given scheme will work, and what extension or modification will be called for in the course of a few years.

In conclusion I wish to point to the fact that in no other way is it likely that any effective onward steps can be taken in our time as

regards the registration of title and the simplification of land transfer. This appears to me of vastly more importance than the abolition of entail, and some other projects which non-professional persons are fond of lauding, as though such were likely to clear away all obstacles in the way of sellers and purchasers of land. Lawyers know that if you have the names of trustees (with power of sale) inscribed on a public register, it really matters nothing that the property is entailed or in settlement. It is ludicrous that the vast property in railways and in shipping should be capable of easy sale and transfer, while scarcely a yard of land can be bought or sold without long and costly inquiries—without a wholly disproportionate and absurd amount of correspondence and conveyancing.

To strike effectively at this great evil is one of the objects in view when I advise a recurrence to safe and successful example, and recommend the study of the system under which three judicial conveyancers and auctioneers (for such they really were) sitting in Dublin, sold in eight years real property of the value of 23 millions, distributing the proceeds expeditiously and accurately. Were such a tribunal instituted here, owners who wished to sell all or any part of their landed property would for their own sakes at once resort to it. Purchasers contrasting this judicial process with the usual auction room and its incidents, would appreciate the difference, and not only prefer the new system but be very likely to give higher prices. Thus a large portion of the landed sales would flow in this channel, and the new titles being inscribed on a register, the solution of the difficulty of land transfer and simplification of title would be a matter only of time. It might be very long before all the land of England came upon the register, but what ought to be aimed at is not so much utopian perfection as a practical mode of relief to all who will resort to it. The land tribunal and its auxiliary register would, although working but gradually, at least afford speedy and sure relief to all who might ask for it. Can any one venture to deny that there are at this moment thousands who would sell land if facilities and a good market were afforded them, or to deny that thousands are ready to buy land in small quantities if they could do so readily, and with a guaranteed title? What is really required is to sweep away the purely artificial obstacles which now keep these two classes of persons apart. What was done in Ireland thirty years since can surely be done in England now. There must be statesmen yet amongst us equal to the task of brushing aside hindrances really slight, because based only on the interests of some and the prejudices of others, and erecting on assured foundation lines, an open and untrammelled market for the sellers and the buyers of land in England.

Discussion *on* Mr. Urlin's Paper.

Sir Robert R. Torrens, K.C.M.G., said that he had not any expectation when he came to the meeting of being called upon to offer any remarks, but as the subject might be of some interest, he would say a few words with respect to the colonies. The colony of South Australia was founded originally for the purpose of establishing a yeoman proprietary in that country, but after the lapse of twenty years, or even less, it was found that the small holdings were rapidly passing out of the hands of the agriculturist into the hands of the village attorneys, owing to the enormous costs of the system of conveyancing which the colonists took out with them as part of the law of England. This became a crying evil, and having been in the custom service in his early days, and thus become acquainted with the system of conducting conveyancing of property in shipping, he afterwards acquired some knowledge of conveyancing of estates and interests in land, and failing to perceive any substantial difficulty in applying to the latter the process which had proved so successful when applied to dealings with property in shipping, he urged the Attorney-General, who was an intimate friend of his own, to take the scheme in hand; but that gentleman said: "That would be entirely opposed to the legal profession here. If you carried it out, it would be a magnificent thing, but it is impossible for me to undertake it." He was then thrown on his own resources, and following the lines laid down in the English Shipping Act, succeeded in applying conveyancing by registration of title to the lands of that colony. Many difficulties which they had to encounter in introducing that system did not exist in Ireland at all, and only in a slight degree in this country. For example, a very defective survey and the absence of old hedgerows, and in many cases of actual occupation, rendered accurate description of parcels and the locating of the land extremely difficult. In England nothing of the kind would occur, and in Ireland they had a splendid ordnance survey, and the country divided into townlands, which as a rule corresponded to the boundary of farms, affording the utmost facility for conducting transfers. He confessed that he did not at all contemplate at first the extraordinary beneficial results which would follow from the substitution of registration of title for the system of conveyancing peculiar to this country. To illustrate it, he would just refer to the case of mortgage. Here when it is only intended to hypothecate or charge the land with a sum of money, we resort to the strange and factitious device of conveying the legal estate to the mortgagee by one deed, and reconveying it by another deed when the money is repaid. In the colonies, under his system, the object is attained by a simple and direct procedure charging the land, and a simple receipt for the mortgage money enclosed on the certificate of title of the mortgage and recorded in the register of titles. The procedure may be completed in less

than a quarter of an hour, and the cost is but 10*s.* for a mortgage, and 4*s.* for its discharge. No professional assistance is necessary. Under the English method of conducting suit transactions, the mortgagee gets possession of the deeds, and as the conveyancers express it, "sits on them." The consequence is that the mortgagee, in the event of his requiring a further loan, is placed in a most injurious position, for the second mortgagee would not only be hampered in his remedies in case of default, but would also be liable to be ousted of his security by a subsequent mortgage attached to the first. The result is, that however ample the security may be in point of value, second mortgages are, as a rule, interdicted in settlements, shunned by prudent men, and only accepted at exorbitant rates. The value of land in the colonies, regarded as a basis of credit, has been greatly increased by its emancipation from those antiquated and factitious proceedings. Under the existing system there is an inevitable tendency to create what are called "blistered titles," that is titles the evidence of which is imperfect in some technical matters as contrasted with perfect marketable titles. Under registration of titles no such tendency exists, and the conversion of blistered titles into indefeasible titles has restored to their natural value many estates depreciated by that cause. These are incidents, the great value of which was not foreseen but developed in the practical working of his system. Time would not admit of more than a brief outline of that system as explained in a Bill drafted by him, applicable to Ireland, which was read a first time in the Commons in 1863, introduced by the Right Honourable W. Monsell, now Lord Emly, and backed by the Right Honourable Henry Herbert and Sir Colman O'Loghlen. The register is compiled by binding together the duplicates of all certificates of title issued by the "Estates Court," representing the freehold, together with the duplicates of all certificates issued upon the transfer or transmission of a freehold. Each of these duplicate certificates constitutes a distinct folium, two or more pages being annexed for registering the memorials of all future dealings with any estate or interest in that particular parcel of land. When the parcels are broken a fresh certificate is issued, and a fresh folium opened for the transferee. On such occasions the portion of land transferred is notified by memorial on the certificate of the transferor, or if he prefers it, or it be deemed convenient, that certificate may be annulled and a fresh certificate issued for the residue of the land; and upon it are carried forward the memorials of all lesser estates or interests affecting that residue which remain unextinguished at the date of registration. Entry of memorial of any dealing on the appropriate folium constitutes registration. Recorded estates are held subject to such estates or interests as are notified on the foliums of the register constituted by the certificate of rolls, but free from all other liens, estates, or interests whatsoever. Certificates of title for whatever estates or interests in registered land are issued in duplicate—one retained in the registry office, the other held by the registered proprietor. The latter must on the occasion of any dealing be given up to the registrar, in order that endorsement may be made thereon notify-

ing such dealing, corresponding with the memorial thereof in the register. That system had been found adequate for every requirement, tested by over twenty years' experience. The cost of conveyancing had been reduced from pounds to shillings, and the time from months to days. The best evidence of its success and efficacy was afforded by the fact that all the other colonies in the Australian group, perceiving the success which attended it in South Australia, had adopted it; and he had recently received letters from British Columbia and Fiji congratulating him on the great success that had attended its adoption there. The failure of the Acts known as Lord Westbury's and Lord Cairns's should not be ascribed to any impossibility or even serious difficulty in applying the principle of "registration of title" to this country, for as a matter of fact that principle was never put on its trial by those Acts; that of Lord Westbury in particular was a hybrid measure, an attempt to bring into operation two antagonistic principles, and rightly described by Sir Henry Thring (member of the royal commission of 1868) to be "entirely unworkable, and to possess all the disadvantages without any of the advantages of the numerous schemes formerly proposed for the registration of deeds." Moreover, the official mechanism by which it was proposed to apply that system was pronounced by Mr. Spencer Follett to be unworkable on such a scale as would render it of public advantage. He (Sir R. Torrens) saw no difficulty whatever in applying his mechanism for registration of title to all the lands in England, though, as we had one-sixth of all the lands in Ireland cleared of all blots and doubts by being passed through the Estates Court, and over 600 titles annually similarly treated by the Copyhold Commission in this country, and as these titles (for the purposes of registration) stood on all fours with the land grants issued by the crown in the Australian colonies, he would suggest that registration of titles should in the first instance be made compulsory as regards these.

Mr. JOHN GLOVER thought, after the interesting address given by Sir R. R. Torrens upon the working of the system of registering titles in the colonies with respect to land, that it might not be uninteresting to the Society to have a little information with regard to the operation of the system of registering titles in relation to another description of property in this country. He had been connected with shipping property for more than thirty years as buyer, seller, and as lender on mortgages, and in the course of that long period—although he could not say he never had a difficulty, because in dealings of every kind there must be difficulties experienced—he could say this, that with reference to the registration of title in shipping property he never had an error. And they must bear in mind that a ship differed from land in this respect, it was moveable property—here to-day and elsewhere to-morrow: it might be altered in form; it might be cut in two and have 20, 30, 40 feet built in the middle of it; it might be raised 8, 10, or 12 feet in height, and otherwise altered in shape; whereas property in land and houses was fixed; was always in the same place. Notwith-

standing these distinctions in the nature of the property, he made the emphatic averment that there was no difficulty about the registration of title. It was high time that the word "impossible" in respect to the registration of titles to real estates should be dismissed from their vocabulary, as it had already been regarding so many other things. If the owner of a ship wanted to borrow money, and some one was willing to lend, he could go to the Custom House, and in less time than he had taken to address the Society, he could fill up a mortgage document prescribed by Act of Parliament, which cost nothing, which recited in simple language, "I, A. B., acknowledge that I have received from C. D., the sum of , for which I promise to give per cent. interest, and hereby transfer as security so many shares in such and such a ship." In that way ships worth from 5,000*l.* to 100,000*l.* could be sold, mortgaged, or divided into any number of shares not exceeding sixty-four, without the intervention of a lawyer, with great facility and at no cost; and with all his experience in such transactions he never knew a mistake. In view of this principle applied to shipping, and to debentures and shares of public companies, he asked whether it was creditable to their sensible, practical English character, that they should allow themselves to be held to the absurdity of requiring such elaborate investigations of title on every transfer, and legal charges to the extent of 3 per cent. to 6 per cent. of the value. Such a system lessened the value, owing to the impediments it offered to the buying and selling of property in land. He took the liberty, in conclusion, of emphasising the recommendation of the writer of the paper, that one of the first steps to be taken in this country to the practical solution of the land question was compulsory registration. As shipowners they had no option. He could not hold a British ship without having a compulsory registered title, and he should like to know what right any British subject had to say to the Government, "You may enforce your regulations on one description of property but not upon another." All Her Majesty's subjects should consent to submit to the investigation of the titles to their property of whatever sort, whether it was for buying, selling, taxation, or anything else.

Mr. WALFORD thought there were many reasons why the system which obtained in the colonies with regard to land transactions could not be applied in this country. One reason was that in the colonies for the most part the Government gave a title *de novo*, and the title being derived from the Government, there really was no difficulty whatever in getting a clear start from that point. The colonists had not had time, if they had desired, to do what had been done in this country, and the law of primogeniture and entail did not prevail there. The charges in the way of family settlements and jointures that had grown up under the English system had never been possible of creation in the colonies. Here an estate might be reserved for children yet unborn, and why not? How were they to deal with estates in this country subject to such jointures and settlements for generation to generation—that was

the question? And when on a death the title had to be investigated with a view to make it indefeasible, it was absolutely necessary in the interests of the purchaser that all questions affecting the title within the knowledge of the law of real property, should be investigated before this title could be given. And if this investigation had to take place a great expenditure in the process of clearing and establishing these facts must be incurred. The knowledge of an evil, and the wishing it to be removed, did not necessarily suggest the practical way of doing this. How could the difficulty be removed? Who was to bear the burden of the cost of those investigations, in the event of their being made compulsory? Was it to be said that he, as the owner of an estate, must submit his title to investigation, and if perchance a conveyancer in the past had overlooked anything in that title, he might, by the process, be thrown out of the ownership of that estate? Was he to run the risk of this? Most certainly not. He who owned a freehold estate should be entitled to dispose of that property, or incumber it in any way he chose within the scope of the law, without any extraneous interference, or involuntarily submitting his title to such an investigation as that proposed. It would never do in an old country like this to revolutionise estates by a compulsory registration of titles, although there could be no possible objection to the adoption of machinery to voluntary processes of this sort, so that any owner who thought his estate would be improved by the process might apply for a clean title.

Mr. J. MACDONELL, replying to the previous speaker's remarks with regard to the Incumbered Estates Act in Ireland, reminded the Society that several years after that Act had been in operation a select committee, composed of some eminent statesmen, sat to investigate the working of the Act, and notwithstanding the immense transactions, covering about a tenth of the land in Ireland, the commissioners found as a matter of fact that there was not a single instance of a mistake having been committed. He would also ask the meeting whether, looking to the present state of the law and the practice of conveyancing, there would not be many great and substantial advantages supposing a system of registration were established. Let him give an illustration of possible benefit. Take an estate just sold, the title to which might be exceedingly complicated: it was investigated, and the investigation took, let it be assumed, a considerable space of time, as well as a considerable amount of expense; if that estate were sold a fortnight afterwards, the whole process might have to be gone through again. Such things happened in many instances; and surely if they had established in this country a system of registration of title—a compulsory system—the second purchaser would see clearly placed on the register the results of the previous investigation, and the scandal of a second examination of title would be avoided. Coming to the paper itself, there was one portion of it that struck him as particularly valuable at the present time, and that was the part which urged the immense advantage of establishing a compulsory registration of title in aid of peasant proprietors. A short time ago he spoke

to an eminent authority on the Irish land question on that subject, and he said in reference to the Irish Land Bill that it was perfectly hopeless to expect that a system of peasant proprietors would be successful, or that they could long continue prosperous, unless a compulsory system of registration of title were established within a short space of time. Those new proprietors would borrow—they would be compelled to do so—and they would mortgage their holdings. They would sell them; and we should see titles clear at the beginning, become exceedingly complicated in a brief period. Therefore it struck him it was of great importance to do what the writer of this paper had proposed. But the registration must be made. If they referred to the paper, they would find that the business in regard to the sale of incumbered estates had fallen between 1864 and 1879 from 429 to 312 sales; and that as regards the sale of unincumbered estates, which was a more important business, the number of applications to the court had diminished in the same period from 43 to 27. There were other proofs of the same falling off in the business where it was stated that the duty fund fell from the year 1864, when it was 6,446*l.*, to 4,000*l.*, the treasury estimate for 1881-82; and he ventured to say that these figures ought to make this country pause before it accepted the Incumbered Estates Court of Ireland as a model. The system in that country was defective, and in his opinion there were far simpler and far more effectual models than it. He could not but remember that Lord O'Hagan stated it as his opinion, that the Incumbered Estates Act, so far as Ireland was concerned, must continue to give less and less valuable results, and he was convinced that it was absolutely essential to employ a procedure in many respects simpler than that which existed.

Mr. S. Bourne said that he could bear testimony to the simplicity with which the process of the sale and registration and transfer of property in ships could be effected, and there could, he said, be no question at all about the security which accompanied all transactions of that description. In answer to Mr. Walford's objection with regard to landed property, he thought it might be fairly asked why was it that one description of property should be subjected to so many charges which were not found necessary in other descriptions of property? If it were right and proper that property in land should be so charged, he could see no reason why shipping should not be subject to as many complications and difficulties; more particularly so when, as had been pointed out by Mr. Glover, in the one case you had a moveable and changeable description of property, needing greater security for identification and registration than land which, now that they had got a good survey all over the country, ought to give rise to no difficulty in this respect whatever. If the present charges had grown up under the existing system, it might not be expedient to require every owner of property to undergo a system of compulsory registration; but there seemed to be no reason why the owner of that property, when he chose to make it the subject of sale, should not be required to submit the title which he held to the investigation, not simply of the pur-

chaser's lawyer, but to some recognised authority connected with the courts of justice which might form the basis of any subsequent contracts. In that way they would gradually limit present difficulties, and a system would grow up by which sales and transfers might be readily effected, getting rid of the complications which now really lessened the value of property. A title so simplified would be sought for in many cases, in order that the owner might have greater facility in disposing of his property. The real truth of the matter he believed was to be traced to the feudal system, which attached superiority to land over any other property, and likewise to complications that had grown up from the ingenuity and research of a profitable nature to those whose business it was to transfer property from one hand to another. One of the great evils that existed in the country at the present time was that they had too large a number of persons who were not producers of wealth in any way at all, but were engaged in obtaining possession of the wealth which others had previously created. The great difficulty which was experienced in providing employment for a large number of people led in a great measure to so many persons being interposed between the beginning and the ending of any transaction. If gentlemen who were educated in the niceties of the law and followed the legal profession, were to follow the stream of emigration from this country to take possession of the property which the nation had in its distant dominions, useful employment of their talents might be found in assisting the occupants of land in taking and maintaining legal possession of their property. They would thus be assisting and contributing to the wealth of the country and in dispensing benefits all round.

Mr. Francis Turner said that as Mr. Bourne had expressed a great desire for the emigration of the non-wealth producing classes, he wished that gentleman had included the Civil Service in his remarks, for many of those who advocated changes in the land laws thought that there was no more useless class than the civil servants in the whole community. With regard to what Mr. Glover said concerning the transfer of shipping property from one man to another without any expense, he (the speaker) could not conceive why he, as a British taxpayer, should be taxed for the benefit of the shipowner. That theory amounted to nothing more or less than that the shipowner should have the benefit of transferring his property, and doing his business at the expense of the taxpayer of this country. If Mr. Glover sold a ship worth 10,000*l.* or 20,000*l.*, he (the speaker) could not help thinking that it was not for the public advantage that he should be able to do so without any expense to himself. Each class of property should bear the expense of its own transfer, and that system which Mr. Glover seemed so much to admire, came to nothing more than this, that the shipowner should be able to transfer the expenses of doing their own business to the shoulders of somebody else. They all knew that government departments were not kept up without considerable expense to the nation. Mr. Urlin had had no doubt something to do with the working of the Irish Incumbered Estates Act, and that gentleman

would not unnaturally desire that a system of transfer, which under his paternal direction had proved so effectual, should be introduced elsewhere. But where was the analogy between the two systems, and the conditions under which that Act was passed? Those who were old enough, and he regretted to say that he was among the number, to remember the passing of the Act, knew that it was passed because the landed proprietors of Ireland, or a large proportion of them, were in a state of utter bankruptcy. They had charged their lands in divers ways, and it became necessary by a severe and drastic measure to clear off those incumbrances, and to give a parliamentary title to persons who were willing to purchase under the Act. It was quite true that comparatively few mistakes were made under it. But that was due to the circumstance that every single title was expensively and laboriously investigated at the cost of that much enduring and constantly oppressed British taxpayer. It was not the landowner or the landowners that paid the shot, but it was they who live in England who provided the funds for their less contented fellow subjects over the Channel. Why should the English submit to the system of compulsory registration, the real advantage of which they failed to get anything like a substantial idea? Why there was a compulsory system of registration in the counties of Middlesex and Yorkshire, and yet within a very few years of the time of which they were now speaking, a number of forged conveyances were executed with respect to property in one of these counties. And why on earth should the community generally be taxed in order that those who invested their money in land should have their title secured, because after all that was the consideration with which they must deal when they thought of introducing a universal system of compulsory registration? What was it to him whether Mr. Glover or Mr. Urlin, or any other person should be able to invest his money in perfect security. Let him attend to his own business, to bear his own charges, and do not let him ask the British public to bear the burden.

Captain J. C. R. Colomb said it appeared to him that there was a little confusion in the discussion that had taken place—between the thing to be done and the way to do it. The question to be approached was—would this system of registration be a good thing or a bad thing? The question as to how to set about it or how to deal with difficulty that might be in the way was an entirely different issue. He must confess that it was a most difficult problem. With regard to what was said about titles being impeached, he could only say that the universal impression among landed proprietors in Ireland was that the Landed Estates Court title was the best title they could possibly have. He thought Mr. Urlin would bear him out in this, that it was a common thing for a man engaged in any transaction affecting his property where it was desirable for him to make his title clear, to avoid all complications, he put it through the Landed Estates Court, and bought it in himself, and that was an ordinary proceeding in Ireland. Sir Robert Torrens had said that it would be a simple matter to make changes

in the law with regard to registration in Ireland, because there was there so complete a survey. No doubt there was a good deal of force in that; but it was not so simple as it at first appeared, because most of the landowners in Ireland did not exclusively own their property. As one drove along a road in that country one might say "that property belongs to so-and-so," but when the property came to be investigated, it was often found that it really belonged to somebody else, and often to two or three. As an unprofessional man, he was simply giving the commonplace view of the subject taken by men like himself. There were two or three points in the paper which he thought Mr. Urlin might have omitted, because they were side issues, and he stated them as a matter of fact, whereas they were mere matter of opinion. The lecturer said: "In travelling through Ireland in after years it might be observed that the best managed estates were usually those which had changed owners by means of the incumbered estates machinery." That was a mere matter of opinion, and he (the speaker), coming from the south of Ireland, stated distinctly that his experience was quite the contrary. It was stated "The transfer from a needy to a solvent class has been followed by development and improvement of various kinds." That was a statement that seemed to carry the weight of common sense with it. But he did not think that the improvements to which the writer had referred had been carried on in any considerable degree by any very large proportion of purchasers under the Incumbered Estates Act. The following statement was one in which he cordially and entirely concurred: "If he is really to be placed in a better position his title must be inscribed on a public register, and thereby kept from falling into doubt, complication, or obscurity." The whole system of land and business transactions in Ireland was one of vicious credit, and if they did not guard against the acuteness and shrewdness of the small village attorney, and make titles clear and absolutely secure, they would make the last state of Ireland worse than the first.

Mr. R. B. MARTIN, M.P., would have liked to have heard some person who could speak with authority, give an account of the system of land registration of the Isle of Man, where the titles are registered, and where at no great expense the transfer of land worked with the greatest regularity. The paper which had been read dealt with a great and interesting problem. It was one that must sooner or later be discussed at great length in another place, and it was a subject for which the public mind ought to be well prepared. The whole system of tenure of land, whatever they might possibly think as to the best way of remedying it, was drifting into a state of difficulty and cumbersomeness, from which it would be well to extricate it before it had gone too far. All circumstances considered, a question of such importance was well worthy of occupying the time of the Society.

Mr. MULHALL wished to call the attention of the Society to one point, and that was to the fact that the transfer of land in Prussia and France was much cheaper than in England, although it must

necessarily be very complicated, especially in France, where there were so many millions of landowners. The number there was twelve or fourteen times greater than in this country, and yet it seemed that the transfer was effected with much less difficulty.

The PRESIDENT (James Caird, C.B., F.R.S.), in proposing a vote of thanks to Mr. Urlin for his excellent and well timed paper, referred also to the interesting and instructive remarks of Sir Robert Torrens. It was obvious that much of the facility of transfer in the Australian colonies arose from the recent origin of the title. They started with a clear title, and by a strict plan of registration kept it clear. He agreed with preceding speakers that in this country compulsory registration, in the sense of compelling every owner of fixed property to register, would not only be impolitic but unnecessary. But when property changed hands under the order of a landed estates court, which gave an indefeasible title, he thought registration should be compulsory. He was much struck with the fact mentioned by Mr. Urlin, that only four in a hundred of the titles given in Ireland by the incumbered estates court had been registered, and that twenty-four out of every twenty-five would thus in forty years have lost the advantage of the clear title with which they started. Looking to the probability of a rapid and large extension of small properties in Ireland, under the new Irish Land Bill, nothing but inextricable confusion of title must arise without compulsory registration. Every facility for this ought to be provided in the most simple and least expensive manner. It had been urged by one speaker that there was no pressing occasion for the introduction in England of any such change as Mr. Urlin's paper contemplated. But they must recollect that it was only under the pressure of great necessity, when the crisis became extreme, that great reforms could be effected. The potato disease of 1846, which swept away the food of a large portion of the people of Ireland, forced upon the landowners of that country an incumbered estates Act. The present position of the same class in Great Britain, in consequence of the depressed, and in too many cases ruined condition of their tenants, might render a similar enactment for this country unavoidable. And the Statistical Society were fortunate in having brought forward, by one of their members, whose knowledge and experience entitled him to be heard, a paper so instructive and well timed as that for which, in the name of the Society, he begged to thank Mr. Urlin.

Mr. DENNY URLIN, after thanking the President and the Society for the kind and considerate manner in which his paper had been received, proceeded to reply to remarks and criticisms which had fallen from some of those who had spoken. He did not complain of that which must have been evident to all, that the discussion had not been to any great extent based upon the paper read, but had to a certain degree wandered off on topics connected with it, yet collateral. Many of the remarks made were upon the history and success of the scheme of registering the title to shipping property, and chiefly upon the adoption of that scheme, in the

largest and most effective way which was possible, to the registering of title to all landed property in our great and growing Australian colonies. The success on the adaptation of a machinery at once most simple and effective, which was very well known to all who had taken the trouble to investigate the subject, was not exactly the question, although it arose out of the question, before the Society this evening. Yet he could not complain of the way in which attention had been directed to the registration to the title to property in ships, and in land at the antipodes, because the success here attained was really so important as to have become the key of the position. If shipping property, and large and small tracts of land in many different parts of the world could safely be inscribed on a public register (and all the evidence proved that it could), there was no logical escape from the conclusion that a similar method might be adopted at home. There are no genuine reasons, such as will bear scrutiny, against the adoption of this mode of registering title to property in England. The question had been asked, whether the parliamentary titles granted for thirty years past in Ireland under the special powers of the land tribunal, had all been found perfect? Now Mr. Walford, with all his various knowledge, might have known that a parliamentary or guaranteed title must, of necessity, be perfectly good and beyond dispute. Of course errors in such conveyances were possible, but the consequences of any such errors would fall not on the purchasers with such title, but on others; the fact was however (as Mr. Macdonell had rightly stated) that very few errors indeed had been from first to last committed. One of them was some years ago brought before Parliament. It was the claim of Lord Lanesborough to a narrow strip of ground along a highway, so narrow that the red line drawn on the map had obscured the boundary, and the map being on a very small scale the error was only visible on close examination with a magnifying glass. This was a fair example of the few mistakes made by the Irish Land Court in many thousand deeds of conveyance. The proposition placed before the Society this evening was briefly this—to create a similar land tribunal for England, and the only answer given had been a *non possumus;* as though all England were firmly and irrevocably bound to a clumsy, costly, and very verbose system of conveyancing. Now no proposal had been made to force on landowners a better system. The proposal made was to open for them the portals of a new court which must facilitate sales and purchases to an indescribable extent. If they felt it desirable to resort to such a mode of relief, surely such ought to be open to them. He (Mr. Denny Urlin) protested against the use of the term "compulsory registration," because it was not proposed by any one, certainly not by him, that there should be any compulsion. All that was asked was a mode of relief, in the shape of a land tribunal with a power of conferring indefeasible title, to be thrown open to those who for any reason desired to resort to it. One speaker had perhaps given the idea that conveyancing might under such a system be abolished; but this was quite imaginary. What was required was that the inscribed owner or owners might always be able to transfer by a simple deed, analogous to those

daily used in the case of railway stock. Now the inscribed owners might be, and often would be, trustees only, and the equitable title, by settlement, agreement, or otherwise, would be by separate instruments not appearing in the register. The Isle of Man had been mentioned, and the fact he understood to be this, that in the Isle of Man the legal title, as regarded power of sale and transfer, was always to be found on a public register, whereas the equitable title might (if the parties so desired) be contained in private documents, not on the register, and into which a purchaser would, in the natural order of things, make no inquiry. This was actually the case now in England with regard to all the vast property in all railway stocks and shares. Mr. F. Turner had enlivened the debate with some humourous remarks; amongst others he had scouted the idea of a public register (as of shipping) kept up at the public expense. Well, the right method would certainly be to make any register of property, whether of landed or any other property, self-supporting by means of office fees. This was a very small point indeed. It had been said by one speaker that the Irish court had become of late years less valuable, because the results had become small, by statistical standards; but this conclusion was not one which a scientific man would arrive at. A land tribunal is a kind of hospital for the cure of titles, and a falling off in business proves only that remedial machinery has worked well. The land tribunal in Ireland has done in past years so large an amount of good work, that its comparative idleness now is no matter either of wonder or of censure. It was invented in 1849 to meet a most pressing emergency, of a kind which can hardly now recur. The elements of mischief of that particular kind do not now exist to any dangerous extent. Mr. F. Turner had alluded to the claims of purchasers of land in Ireland to the amount of 50 millions sterling, who had been on completing their purchases both legally and morally indemnified by the State against all fresh claims by tenants or otherwise. While recognising the justice of this claim, he (Mr. Denny Urlin) had thought it prudent, in drawing up his paper, not to touch on any "burning question" now discussed in political circles. The President had spoken of the landlord class at home, who were specially interested in the formation of a new land tribunal, with powers of conferring indefeasible title. This was one of the questions of the day. Although but a small proprietor, he (Mr Denny Urlin) had very much sympathy with a class on whom an undue share of taxation and burdens of all kinds had been placed. It was for many reasons desirable to provide that class with the means of selling all or any part of their property in open market, and without the factitious and unreasonable cost which now besets all such operations. Mr. Turner, who was so much afraid of a taxation of the public to the extent of a few thousands in return for a great public benefit, would be reassured when informed that a duty had always been levied in the Irish court since 1858, in aid of the cost of that court. With regard to the registry in Middlesex, it was hardly necessary to remind any who had the smallest knowledge of the subject, that the registry in Middlesex was one of deeds and not of title. The

two things were absolutely different. A mere registry of deeds was not an advantage, but rather a source of trouble and expense, to every person concerned. A registration of title, although a vast benefit to the State, could not be introduced suddenly—only by slow degrees, on a devolution of ownership; and a land tribunal for clearing off incumbrances was the only possible method of bringing such a registry into effective operation in England. One speaker had questioned the statement with regard to the superior condition of the estates which had changed hands under the Irish Acts. This was certainly fair matter of opinion, and there were probably some small estates where no improvement was visible. His own conclusions were rather based on many larger examples; and it might make his meaning plainer to those who knew Ireland, if he adverted to the fact that large tracts of land had passed, under the machinery of the land court, into the hands of such men as Murland, the Pims, A. Pollok, Caimes of Drogheda, Jameson, Baron Martin, and Mitchell Henry. These were but a very few examples of a new order of proprietors, men of capital, of intellect, and of generosity, and to enroll such amongst the land owning class could not have been other than a great benefit to Ireland. All parts of Ireland were not alike circumstanced, but as to many parts there was no possible doubt of the advantage derived through the change of ownership into solvent and improving hands. The best wishes of all who really cared for Ireland were with landowners of the kind referred to; and the question now before the Society was whether great benefits might not be obtained by the giving of much extended facilities for purchase of lands in England by men of the same class. At present the land market is artificially barred, and capitalists, large and small, are driven to make their investments in any way but that which they would naturally choose, the soil of their native country.